UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:17-cy-306-FDW

DASHAWN GERVIN,)	
Plaintiff,)	
vs.)	
CHRISTIAN HENDLEY, et al.,)	<u>ORDER</u>
Defendants.)	
)	

THIS MATTER is before the Court on its January 16, 2019 Orders requiring Plaintiff to show cause why this action should not be dismissed for lack of prosecution. (Doc. Nos. 29).

Pro se Plaintiff filed this action pursuant to 42 U.S.C. § 1983 while in the custody of the North Carolina Department of Public Safety. The Amended Complaint passed initial review on excessive force claims against Defendants Hendley and Fischer. (Doc. No. 13). Defendants were served and filed Answers, and a pretrial scheduling order was entered. (Doc. No. 21).

On January 11, 2019, Defendants filed a Motion for Status Update noting that Plaintiff was released from NCDPS custody on December 28, 2019 and had not updated his address with the Court or defense counsel since his release. (Doc. No. 27).

On January 16, 2019, the Court ordered Plaintiff to show cause in writing within 14 days why this action should not be dismissed for lack of prosecution. (Doc. No. 29). The Clerk of Court was instructed to mail a copy of the Order to Plaintiff's address of record at the Bertie Correctional Institution as well as to his probation office. (<u>Id.</u>).

On January 30, 2019, the copy of the Order that was mailed to Plaintiff's address of record at Bertie C.I. was returned to sender. (Doc. No. 30). NCDPS's website indicates that Plaintiff has

absconded from parole release and is currently a fugitive.¹

Plaintiff failed to comply with the Court's January 16 Order and appears to have abandoned this action. Therefore, it will be dismissed without prejudice. Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); <u>Link v. Wabash R.R. Co.</u>, 370 U.S. 626, 631-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, a district court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS, THEREFORE, ORDERED that:

- (1) This action is **DISMISSED** without prejudice for lack of prosecution and for failure to comply with this Court's Order dated January 16, 2019.
- (2) The Clerk of this Court is directed to terminate this action.

Signed: February 11, 2019

Frank D. Whitney

Chief United States District Judge

¹ NCDPS's website is https://webapps.doc.state.nc.us/opi/offendersearch.do?method=view. <u>See</u> Fed. R. Ev. 201.